

RONALD E. MILAR

IBLA 94-344

Decided August 2, 1995

Appeal from decision of the California State Office, Bureau of Land Management, declaring mining claim abandoned and void for failure to pay rental fees. CAMC 247649.

Affirmed.

1. Mining Claims: Abandonment–Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

In order to qualify for a small miner exemption from the rental fee requirement of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, a mining claim must meet all conditions set out in 43 CFR 3833.1-6(a) (1993). Where the surface estate of a claim is in Federal ownership and the claim is located on the banks of a Wild and Scenic River Study Area, the claim must be under an approved plan of operations as of Aug. 31, 1993. Where the claimant files a plan of operations for BLM's approval on Aug. 31, 1993, and BLM does not approve it on that date, the claim is not under an approved plan of operations as of the deadline.

APPEARANCES: Ronald E. Milar, pro se; D. K. Swickard, Area Manager, Folsom Resource Area Office, Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Ronald E. Milar appeals from the February 3, 1994, decision of the California State Office, Bureau of Land Management (BLM), declaring the Diana M placer mining claim (CAMC 247649) abandoned and void for failure to pay rental fees in the amount of \$100 per claim or, in the alternative, to submit a certification of exemption from payment of rental fees for the 1993 and 1994 assessment years.

The Diana M claim is located on lands adjacent to the North Fork of the Merced River in Folsom County, California. On June 18, 1993, BLM

notified Milar that Congress had designated lands within a quarter mile of that section of river as a Wild and Scenic River Study Area for possible inclusion in the National Wild and Scenic River System. P.L. 102-432 (Oct. 23, 1992), 106 Stat. 2212, 16 U.S.C.A. § 1274(a)(62) (West Supp. 1994). BLM expressly advised Milar as follows:

Because of this law all mining claim operations exceeding the level of "casual use," as defined in Federal Regulations 43 CFR 3809.0-5(b) will require the submission of a plan of operations and a reclamation bond.

Activities that exceed casual use include the use of mechanized earth moving equipment (such as suction dredges) and occupying the public lands for more than 14 days in a 90-day period. Such activities require the approval of a plan of operations and the submission of a reclamation bond.

For suction dredging activities, materials that may help you prepare a plan of operations are enclosed. If the use of a camper trailer is necessary during such operations, a bond of \$1,000 will be required. Suction dredging operations that do not involve the use of a trailer will require a \$500 bond. Bonding requirements for other types of mining claim operations will be determined on a case-by-case basis. Reclamation bonds may be submitted in the form of a cashiers check or a certificate of deposit made payable to the [BLM].

BLM provided materials to help Milar prepare a plan of operations and expressly warned that "[c]onducting operations that exceed casual use without first obtaining plan approval and providing the required reclamation bond may result in civil and/or criminal penalties." Milar received that notice on June 22, 1993.

On August 31, 1993, Milar filed a completed plan of operations form indicating that he planned to engage in suction dredging using two suction dredges and one vehicle. No camper trailer would be used. No bond was enclosed with the form. He explained in the application that he was trying to secure a bond at that time, and that no dredging would take place on the claim until all the proper approved plans or bonds were secured. 1/

1/ The record initially provided by BLM lacked documentation concerning Milar's request for approval of a plan of operations. In particular, appellant's application for approval of a plan of operations was missing. By Order dated Apr. 13, 1994, we directed BLM to supplement the record, and BLM has subsequently submitted documents showing that Milar did file a plan of operations on Aug. 31, 1993, but did not submit a reclamation bond with the plan.

In the decision on appeal, BLM noted that Milar applied for a small miner exemption from the rental fees on August 31, 1993, although the record does not contain the application. ^{2/} BLM held that he did not qualify for a small miner exemption under 43 CFR 3833.1-7 and 3833.1-6(a)(4) (1993) because, "according to the records at the [BLM's] Folsom Resource Area Office, as of August 31, 1993, the claimant's Plan of Operations had not been approved for the assessment year ending September 1, 1993," for the claim. BLM ruled that, "by not having the * * * claim under either a Notice or a valid Plan of Operations on or before August 31, 1993, claimant has failed to qualify for an exemption from payment of rental fees." Since no fee was paid, BLM declared the claim abandoned and void.

On appeal Milar (appellant) asserts that he had either an approved plan of operations or had provided notice to BLM of his operation by August 31, 1993.

[1] On October 5, 1992, Congress enacted The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (the Act), a provision of which relating to mining establishes that

for each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. [§] 28-28e), and the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. [§] 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * * .

106 Stat. 1378. The Act also contained an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of an additional \$100 rental fee on or before August 31, 1993. 106 Stat. 1378-79.

Implementing Departmental regulations provide as follows:

Mining claim or site located on or before October 5, 1992. A nonrefundable rental fee of \$100.00 for each mining claim, mill

^{2/} A memorandum in the casefile indicates that the BLM State Office was unable to locate either the documents associated with Milar's request for a small miner exemption or his 1993 assessment work notice. However, BLM presumed that those documents had been filed on Aug. 31, 1993, because the Mining Claim Recordation System computer records showed that he timely filed them.

site, or tunnel site, shall be paid on or before August 31, 1993, for each of the assessment years beginning on September 1, 1992, and September 1, 1993, or a combined rental fee of \$200.

43 CFR 3833.1-5(b) (1993).

The only exemption provided from this annual rental requirement is the so-called small miner exemption, available to claimants holding 10 or fewer claims on Federal lands who meet all the conditions set forth in 43 CFR 3833.1-6(a) (1993). William B. Wray, 129 IBLA 173 (1994). Where the lands are not in the National Park or National Forest Systems, and where the surface estate of the lands is in Federal ownership, in order to qualify for the exemption, the mining claim must be "under * * * [o]ne or more Notices or approved Plans of Operations pursuant to [subpart] 3809 of this title." See 43 CFR 3833.1-6(a)(4) (1993). ^{3/}

In some cases, where a claim has a project area whose operations cause a cumulative disturbance of 5 acres or less, the claimant must simply file a notice with BLM, and need not file an application for approval of a plan of operations. See 43 CFR 3809.1-3. Hence, the regulations governing the small miner exemption refer, in the alternative, to situations where the claim is "under" either "approved Plans of Operations" or "Notices." The question of which term applies is governed by the circumstances of the claim at issue.

In the present case, the lands covered by this claim are included in a Wild and Scenic River Study Area for possible inclusion in the Wild and Scenic River system. As a result, BLM may not accept a simple "notice" that operations are occurring, but a plan of operations must instead be filed with and approved by BLM. See 43 CFR 3809.1-4(b)(2); Pierre J. Ott, 125 IBLA 250, 252-53 (1993). BLM expressly so informed appellant by letter received on June 22, 1993.

To qualify for a small miner exemption, appellant needed to have his claim "under [an] approved [Plan] of Operation" on August 31, 1993. (Emphasis supplied.) 43 CFR 3833.1-6(a)(4) (1993). There is no doubt, as BLM held, that appellant did not have his claim under an approved plan of operations on August 31, 1993. Although he filed a plan for approval on that date, appellant could not reasonably have expected that BLM would

^{3/} The regulation also refers to 43 CFR Subpart 3802, governing lands that are under wilderness review. The lands in question are not covered by that subpart.

The regulations also recognize that claims may be "under * * * [a] special use permit issued by a Federal agency for the mining or removal of locatable minerals." Such cases arise under the Weeks Act on acquired lands governed by the U.S. Forest Service. The present case is not covered.

approve the plan (and that his claim would therefore be "under an approved plan") on the date it was filed, as the regulations grant BLM 30 days from date of receipt to analyze the proposal and to notify the operator of approval or changes and additions necessary to meet the requirements of the regulations. 43 CFR 3809.1-6(a). ^{4/}

Appellant was thus ineligible for the small miner exemption, and the Act required him to pay the rental fees for this claim on or before August 31, 1993. Where a mining claimant fails to qualify for a small miner exemption from the rental fee requirement, failure to pay fees in accordance with the Act and regulations results in a conclusive presumption of abandonment. Lee H. & Goldie E. Rice, 128 IBLA 137, 141 (1994). The Department is without authority to excuse lack of compliance with the rental fee requirement of the Act, to extend the time for compliance, or to afford any relief from the statutory consequences. There is no evidence of payment in the record. In the absence of rental or exemption, BLM properly declared the claim abandoned and void.

Accordingly, pursuant to the authority delegated to the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

David L. Hughes
Administrative Judge

I concur.

James L. Byrnes
Chief Administrative Judge

^{4/} The regulations also allow BLM an additional 60 days to complete review, following notice to the applicant, where circumstances justify.

